

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIE LUXE INTERNATIONAL, LLC AND MARJORIE
GUBELMANN RAEIN,

Plaintiffs,

v.

DANIEL BENEDICT, MICHELE BROWN AND DANIEL
BENEDICT DESIGNS, INC.

Defendants.

X
:
:
: 08 Civ. 5023 (LAP)(GWG)
:
:
: **AFFIDAVIT OF**
: **MARK J. HYLAND**
:
:
:
:
X

STATE OF NEW YORK)
 : ss.
COUNTY OF NEW YORK)

I Mark J. Hyland, being duly sworn, deposes and says:

1. I am a member of the law firm of Seward & Kissel LLP and a member of the bar of this Court. I have personal knowledge of the facts set forth herein.

2. On July 1, 2008, I received a telephone call from counsel for Defendants, Michael Kennedy, Esq. When I returned his call later that day, Mr. Kennedy made a proposal to resolve a limited portion of this case.

3. Mr. Kennedy also informed me that his client, Daniel Benedict, would be disclosing the terms of this narrow proposed resolution to the Court, and he read to me a portion of Benedict's Affidavit, which had not been filed at that time.

4. I informed Mr. Kennedy that disclosing the details of the proposal in the midst of a contested action was inappropriate under the Federal Rules and I cautioned him

against it. I followed the telephone conversation with a letter to Mr. Kennedy. A copy of my July 1, 2008 letter to Michael Kennedy, Esq. is attached as Exhibit A.

/s/ Mark J. Hyland

Mark J. Hyland

Sworn to before me this
8th day of July, 2008

/s/ Je Jun Moon

Notary Public

JE JUN MOON
Notary Public, State of New York
No. 02MO6033737
Qualified in New York County
Commission Expires Apr. 24, 2010

SK 26271 0001 898366

Exhibit A

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MARK J. HYLAND
Partner
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July 1, 2008

VIA EMAIL

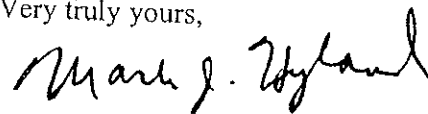
Michael Kennedy, Esq.
The Law Offices of Michael Kennedy
419 Park Avenue South, 16th Floor
New York, New York 10016

**Vie Luxe International, LLC and Marjorie Gubelmann
Raein v. Daniel Benedict, Daniel Benedict Design, Inc.
and Michele Brown, No. 08 Civ. 50237**

Dear Michael:

I write to follow up on our telephone call from this afternoon in which you, on behalf of your client, proposed in general terms a limited settlement regarding two of Vie Luxe's private label clients -- W Hotels and Calvin Klein. During our conversation you read to me a portion of Daniel Benedict's affidavit to the Court, disclosing the terms of the proposed limited settlement. I stated to you that while the proposal was wholly inadequate, submitting the details thereof in your client's affidavit was inappropriate and inadmissible as evidence under Rule 408 of the Federal Rules of Evidence. Upon placing you on notice that this was inappropriate under the Federal Rules, you hung up the phone on me. We reiterate that you hereby are on notice that submitting the terms of your client's settlement proposal in his affidavit to the Court is improper, and Plaintiffs reserve all of their rights under the Federal Rules in connection with this matter.

Very truly yours,



MJH:mbr

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